

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MICHAEL P. NAVARRO and
DINA NAVARRO,

Plaintiffs,

v.

No. CIV 05-522 BB/LCS

WESTSIDE FARMERS MARKET, LLC d/b/a
Sunflower Store, ANDRES GUTIERREZ, and
his successor, A&R AIR CONDITIONING
AND REFRIGERATION SERVICE, INC.,
individually, jointly, and severally, DAVID
HILLIARD, COOPERSMITH -
FITZPATRICK LAND COMPANY, and
NATURAL TRADERS, LLC,

Defendants.

MEMORANDUM OPINION
AND
ORDER GRANTING PARTIAL MOTION TO DISMISS
BY DEFENDANT GUTIERREZ

THIS MATTER is before the Court on the *Motion of Defendant Gutierrez* [Doc. 79] to join the motion of Defendant Westside Farmers Market and Natural Traders (“Farmers”) for partial dismissal [Doc. 74] of Plaintiffs’ complaint. For the reasons stated in this Court’s most recent opinion granting Farmers motion, this *Motion* is also Granted.

Discussion


Once again, these motions are not directed at Plaintiffs' claim for negligence or the common law duty of a landlord to a business invitee. Plaintiffs are, however, incorrect as a matter of law that, "Whether the cited statutes provide a direct private cause of action to Plaintiffs is irrelevant to whether Plaintiffs have stated grounds for recovery or negligence per se for violation of the legal standards established in the federal and state statutes pled." Pls. Resp. p. 7. *Valdez v. Cillessen & Sons, Inc.*, 734 P.2d 1258 (N.M. 1987) (Plaintiffs allegations of contractors violations of OSHA did not constitute negligence per se as that Act creates no civil liability.).

ORDER

The Motion of Defendant Gutierrez for Partial Dismissal is GRANTED. Plaintiffs' counts seeking recovery for negligence per se for Defendant's alleged violations of Federal Hazardous Substance Act, 15 U.S.C. § 1261(f), *et seq.*; Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*; Consumer Product Safety Act, 15 U.S.C. § 2051, *et seq.*; Non-Generators, Arrangers Liability Act, 42 U.S.C. § 9607(a)(3); Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11001, *et seq.* (1986); New Mexico Occupational Health and Safety Act, NMSA

1978 § 50-9-1, *et seq.*; NMSA, Chapter 74, Environmental Improvement, in particular NMSA 1978 §§ 74-4-3, 74-4-4, and 74-4-4.7, are DISMISSED as to all Defendants.

SO ORDERED this 28th day of December, 2006.


BRUCE D. BLACK
United States District Judge

For Plaintiffs:

Colbert Coldwell, El Paso, TX

For Defendant Gutierrez:

Mark D. Jarmie, Albuquerque, NM